

EXHIBIT 58

Page 1

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:	*	
	*	
24 HOUR FITNESS	*	Chapter 11
WORLDWIDE, INC., ET AL.,	*	
Debtors.	*	Case No.: 20-11558 (KBO)
	*	
	*	(Jointly Administered)
	*	
24 HOUR FITNESS	*	
WORLDWIDE, INC.,	*	
Plaintiff,	*	
	*	
VS.	*	Adv. Proc. No. 20-51051 (KBO)
	*	
CONTINENTAL CASUALTY	*	
COMPANY, ET AL.,	*	
Defendants.	*	

CONFIDENTIAL

ORAL AND VIDEOTAPED 30(b)(6) DEPOSITION OF CONTINENTAL
CASUALTY COMPANY THROUGH TRACY SCHOHN

CONFIDENTIAL

VOLUME 1

APRIL 14, 2022

(Reported Remotely)

NMA
COMPRESSED TRANSCRIPT

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<p>1 ORAL AND VIDEOTAPED 30(b)(6) DEPOSITION of</p> <p>2 CONTINENTAL CASUALTY COMPANY through TRACY SCHOHN,</p> <p>3 produced as a witness at the instance of the Plaintiff,</p> <p>4 and remotely duly sworn, was taken in the above-styled</p> <p>5 and numbered cause on April 14, 2022, from 11:05 a.m. to</p> <p>6 3:07 p.m., before Carol Jenkins, CSR, RPR, CRR, in and</p> <p>7 for the State of Texas, reported by machine shorthand,</p> <p>8 with the Witness in Chicago, Illinois, pursuant to the</p> <p>9 Federal Rules of Civil Procedure, the Emergency Order</p> <p>10 Regarding the COVID-19 State of Disaster, and the</p> <p>11 provisions stated on the record or attached hereto.</p>	<p>1 REMOTE APPEARANCES:</p> <p>2</p> <p>3 FOR THE PLAINTIFF:</p> <p>4 Mr. David E. Weiss</p> <p>5 Ms. Elizabeth Bowman</p> <p>6 Reed Smith LLP</p> <p>7 101 Second Street, Suite 1800</p> <p>8 San Francisco, California 94105</p> <p>9 415.543.8700</p> <p>10 dweiss@reedsmith.com</p> <p>11</p> <p>12 FOR THE DEFENDANT, CONTINENTAL CASUALTY COMPANY:</p> <p>13 Mr. Brett Ingerman</p> <p>14 Mr. Matthew S. Sarna</p> <p>15 Mr. Matt Denn</p> <p>16 DLA Piper LLP</p> <p>17 6225 Smith Avenue</p> <p>18 Baltimore, Maryland 21209</p> <p>19 410.580.3000</p> <p>20 brett.ingerman@us.dlapiper.com</p> <p>21</p> <p>22 FOR THE STARR SURPLUS DEFENDANT:</p> <p>23 Ms. Ferdusi Chowdhury</p> <p>24 Hinshaw & Culbertson</p> <p>25 800 Third Avenue, Suite 1300</p> <p>New York, New York 10022</p> <p>212.471.6200</p> <p>fchowdhury@hinshawlaw.com</p> <p>26</p> <p>27 FOR THE ALLIED WORLD DEFENDANT:</p> <p>28 Ms. Elizabeth M. Brockman</p> <p>29 Ms. Andrea Ortiz of Mound Cotton</p> <p>30 Mr. Andrew Halpern of Otterbourg P.C.</p> <p>31 Selman Breitman LP</p> <p>32 11766 Wilshire Boulevard, Suite 600</p> <p>33 Los Angeles, California 90025</p> <p>34 310.445.0800</p> <p>35 ebrockman@selmanlaw.com</p> <p>36</p> <p>37 FOR THE ALLIANZ DEFENDANT:</p> <p>38 Ms. Marlie McDonnell</p> <p>39 Clyde & Co</p> <p>40 271 17th Street NW, Suite 1720</p> <p>41 Atlanta, Georgia 30363</p> <p>42 404.410.3150</p> <p>43 marlie.mcdonnell@clydeco.us</p>
<p>Page 4</p> <p>1 FOR THE ENDURANCE AMERICAN DEFENDANT:</p> <p>2 Mr. James Bauer</p> <p>3 Clyde & Co</p> <p>4 271 17th Street NW, Suite 1720</p> <p>5 Atlanta, Georgia 30363</p> <p>6 404.410.3150</p> <p>7 james.bauer@clydeco.us</p> <p>8</p> <p>9 FOR THE LIBERTY MUTUAL FIRE DEFENDANT:</p> <p>10 Mr. Joel L. McNabney</p> <p>11 Robinson & Cole LLP</p> <p>12 777 Brickell Avenue, Suite 680</p> <p>13 Miami, Florida 33131</p> <p>14 786.725.4119</p> <p>15 jmcnabney@rc.com</p> <p>16</p> <p>17 FOR THE QBE AND GENERAL SECURITY DEFENDANTS:</p> <p>18 Ms. Elizabeth Kniffen</p> <p>19 Zelle LLP</p> <p>20 500 Washington Avenue South, Suite 4000</p> <p>21 Minneapolis, Minnesota 55415</p> <p>22 612.359.4261</p> <p>23 ekniffen@zelle.com</p> <p>24 ALSO PRESENT:</p> <p>25 The Videographer, Ms. Keitha Hanks</p>	<p>Page 5</p> <p>1 INDEX</p> <p>2</p> <p>3 PAGE</p> <p>4 Appearances 02</p> <p>5 Stipulations 01</p> <p>6 TRACY SCHOHN</p> <p>7 Examination by Mr. Weiss 08</p> <p>8 Signature and Jurat 129</p> <p>9 Reporter's Certificate 130</p> <p>10</p> <p>11 EXHIBITS</p> <p>12</p> <p>13 NO. DESCRIPTION PAGE</p> <p>14 Schohn Exhibit 1 13</p> <p>15 Plaintiff's Fourth Amended Notice of 30(b)(6)</p> <p>16 Deposition to Continental Casualty Company</p> <p>17 Schohn Exhibit 2 15</p> <p>18 Defendant's Responses and Objections to</p> <p>19 Plaintiff's Third Amended Notice of 30(b)(6)</p> <p>20 Deposition to Continental Casualty Company</p> <p>21</p> <p>22 Schohn Exhibit 3 18</p> <p>23 Ms. Schohn's LinkedIn</p> <p>24 Schohn Exhibit 4 24</p> <p>25 Defendant Continental Casualty Company's Responses</p> <p>and Objections to Plaintiff's First Set of</p> <p>Interrogatories</p> <p>26</p> <p>27 Schohn Exhibit 5 27</p> <p>28 McLarens Reply Requested - ROR Letter Document</p> <p>29 Schohn Exhibit 6 29</p> <p>30 CNA ClaimPlus New Loss Notification</p> <p>31</p> <p>32 Schohn Exhibit 7 32</p> <p>33 Email String Bates CNA 170-71</p>

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1	THE VIDEOGRAPHER: Good morning. Today's		1	is David Weiss, and I represent 24 Hour Fitness.	
2	date is Thursday, April 13th, 2022 -- or, I'm sorry,		2	How are you today?	
3	April 14th, 2022. It is 11:05, and we are now on the		3	A. I'm good. Thank you.	
4	record.		4	Q. Have you ever given a deposition before?	
5	Will everyone please state their location		5	A. No.	
6	and the court reporter please swear in the witness.		6	Q. Have you ever testified previously in a court	
7	MR. WEISS: I'll start. My name is David		7	proceeding before?	
8	Weiss from Reed Smith on behalf of the plaintiff, 24		8	A. No.	
9	Hour Fitness; and I'm located currently in Corte Madera,		9	Q. Have you ever testified in an arbitration	
10	California.		10	proceeding before?	
11	MR. INGERMAN: Brett Ingerman, DLA Piper,		11	A. No.	
12	on behalf of CNA, Continental Casualty Company, and		12	Q. I'm going to go through some of the ground	
13	representing the witness here today.		13	rules for the deposition.	
14	MS. SCHOHN: Tracy Schohn with CNA		14	I understand that you have counsel with	
15	Insurance, and we're in Chicago, Illinois.		15	you today, correct?	
16	(Witness sworn)		16	A. Yes.	
17	MR. WEISS: Do -- do we need to have the		17	Q. All right. First, do you understand that	
18	videographer give any speech or anything?		18	you're under oath and that the oath that you've taken	
19	(Reporter clarification.)		19	has the same effect as if you were testifying in court?	
20	TRACY SCHOHN,		20	A. I do.	
21	having been first remotely duly sworn, testified as		21	Q. The -- we have a -- so a deposition is a unique	
22	follows:		22	experience. It's not like a regular conversation where	
23	EXAMINATION		23	people finish each other's sentences and talk over each	
24	BY MR. WEISS:		24	other.	
25	Q. All right. Good morning, Ms. Schohn. My name		25	We have a court reporter here who is	

3 (Pages 6 to 9)

<p style="text-align: right;">Page 54</p> <p>1 rights letter.</p> <p>2 Q. Is it -- where there's a quota share policy and</p> <p>3 an adjuster like McLarens involved, is it typically the</p> <p>4 process for McLarens or another adjuster in that role to</p> <p>5 be responsible for preparing drafts of reservation of</p> <p>6 rights letters?</p> <p>7 A. They can, yeah. It's not unusual.</p> <p>8 Q. You mentioned earlier that there were, I guess,</p> <p>9 somewhere between 50 and 100 quota share COVID claims</p> <p>10 that CNA was dealing with.</p> <p>11 At around this particular time period in</p> <p>12 March, so March 28th of 2020, can you estimate about how</p> <p>13 many of those claims had been submitted to CNA already?</p> <p>14 A. Of the COVID quota share claims?</p> <p>15 Q. Yeah.</p> <p>16 A. I have -- I don't know.</p> <p>17 Q. All right. Where is your office located</p> <p>18 personally?</p> <p>19 A. So I -- I'm remote. I work from home.</p> <p>20 Q. Okay. In March of 2020, were you working from</p> <p>21 home?</p> <p>22 A. Yes.</p> <p>23 Q. And how about Mr. Bradley, do you know if he</p> <p>24 was working from home in March of 2020?</p> <p>25 A. I believe so, yes.</p>	<p style="text-align: right;">Page 55</p> <p>1 Q. Did -- was that because of COVID, or was that</p> <p>2 something that existed prior to COVID?</p> <p>3 A. That existed prior to COVID.</p> <p>4 Q. If you go back to the draft reservation of</p> <p>5 rights letter that begins on CNA 53, which is part of</p> <p>6 Exhibit 5.</p> <p>7 A. Okay.</p> <p>8 Q. And turn to page -- the second page of the</p> <p>9 letter, page -- which is Bates numbered 54. It says:</p> <p>10 The 24 Hour Fitness property policies provide all risk</p> <p>11 coverage on all real and personal property subject to</p> <p>12 stated exclusions. The policy is -- policy coverage is</p> <p>13 also extended per endorsement No. 2 to "interruption by</p> <p>14 communicable disease."</p> <p>15 And then there is a -- then it quotes from</p> <p>16 that endorsement No. 2.</p> <p>17 Do you see that?</p> <p>18 A. I see that.</p> <p>19 Q. And then it says: The policy is extended to</p> <p>20 cover the reasonable and necessary expenses incurred by</p> <p>21 the insured to, (a), clean up, remove and dispose of</p> <p>22 communicable diseases from insured property at a</p> <p>23 described location.</p> <p>24 Do you see that?</p> <p>25 A. I see that.</p>
<p style="text-align: right;">Page 56</p> <p>1 Q. Do you know what is being referred to there as</p> <p>2 a "described location"?</p> <p>3 A. This should be one of the insured's locations.</p> <p>4 Q. And why do you -- does the policy, the 24 Hour</p> <p>5 Fitness policy, have a list of locations in it?</p> <p>6 A. I don't believe so, no. The policy itself does</p> <p>7 not.</p> <p>8 Q. So why do you think that the reference to</p> <p>9 described location refers to a 24 Hour Fitness location?</p> <p>10 A. Because that's the -- those are the locations</p> <p>11 they have an interest in.</p> <p>12 Q. Does the policy define the term described</p> <p>13 location anywhere?</p> <p>14 MR. INGERMAN: You should -- you can look</p> <p>15 at it, what he's shown, if you don't have a memory, if</p> <p>16 you want to.</p> <p>17 A. Oh, I'll look at it.</p> <p>18 Q. (By Mr. Weiss) Okay. So the policy is</p> <p>19 previously marked as Exhibit 14 if you want to take a</p> <p>20 look at that.</p> <p>21 (Schohn Exhibit 14 marked.)</p> <p>22 Q. (By Mr. Weiss) And it's Bates numbered CNA</p> <p>23 1150 to 1198.</p> <p>24 THE VIDEOGRAPHER: Would you like me to</p> <p>25 pull it up?</p>	<p style="text-align: right;">Page 57</p> <p>1 MR. WEISS: No, I don't think -- you don't</p> <p>2 have to because the witness has it, but thank you.</p> <p>3 Q. (By Mr. Weiss) I think the question was: Is</p> <p>4 there anyplace in the policy where it defines what a</p> <p>5 described location is?</p> <p>6 A. I don't believe that it's in here, no.</p> <p>7 Q. Going back to Exhibit 5, we were looking at</p> <p>8 this draft reservation of rights letter and the</p> <p>9 communicable disease endorsement language that was put</p> <p>10 into the letter on page CNA 54. It talks -- it says --</p> <p>11 there's a -- there's a section that says -- it says:</p> <p>12 All coverage above must be directly resulting from</p> <p>13 access being prohibited to a described location or any</p> <p>14 portion thereof and, (a), due to the actual presence of</p> <p>15 and the spread of communicable diseases at that</p> <p>16 described location; and, (b), as a direct result of a</p> <p>17 declaration by civil authority enforcing any law or</p> <p>18 ordinance regulating communicable diseases.</p> <p>19 Do you see that?</p> <p>20 A. I see that.</p> <p>21 Q. Okay. In -- in around -- in the spring of</p> <p>22 2020, was CNA aware of any measures that were available</p> <p>23 to test for the presence of COVID-19 at a business</p> <p>24 location?</p> <p>25 A. I'm not aware of any ability to test.</p>

15 (Pages 54 to 57)

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1 Q. Did -- are you aware of whether CNA did any
2 testening -- testing of any insured business locations
3 for the presence of COVID-19 during the spring of 2020?
4 A. I'm not aware of any testing that was done by
5 CNA.
6 Q. Are you aware of any testing done on behalf of
7 CNA by any adjuster?
8 A. No.
9 Q. Are you aware of CNA conducting any testing at
10 any time during the pandemic at insured business
11 locations?
12 A. I am not aware of any testing done, no.
13 Q. Are you aware of CNA publishing any guidance
14 for policyholders as to how they might test for the
15 presence of COVID at an insured location?
16 A. I am not aware of any -- anything that was --
17 any guidance that was given to anyone.
18 Q. Are you aware of any research that CNA has done
19 regarding the ability to test for the presence of COVID
20 at an insured location?
21 A. No, I'm not.
22 Q. Are you aware of any testing that CNA has ever
23 done at an insured location for any communicable
24 disease?
25 MR. INGERMAN: I'm going to -- I'm going

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1 to object as being beyond the scope of the 30(b)(6)
2 notice. You're certainly free to ask her about what
3 they did with respect to the 24 Hour claim. But any
4 testing for any communicable disease, now we're beyond
5 even COVID-19. So I'm going to object.
6 I'm going to allow you to answer it, but I
7 -- I just hope we can stay closer to the 30(b)(6)
8 notice.
9 A. I'm not aware of other testing for other
10 communicable disease.
11 Q. (By Mr. Weiss) Okay. In connection with the
12 24 Hour Fitness claim, what would CNA need from 24 Hour
13 Fitness to demonstrate the actual presence of communic
14 -- of COVID-19 at a described location?
15 MR. INGERMAN: Objection to the form.
16 You can answer.
17 A. So in the context of this claim, what we were
18 provided did not, you know, did not satisfy that. In
19 terms of what would be required, I don't have an answer
20 to that. I just know that what was provided did not
21 demonstrate or did not meet that requirement.
22 Q. (By Mr. Weiss) If 24 Hour Fitness identified
23 somebody who had tested positive with COVID-19 and they
24 were present at an insured location, would that be
25 sufficient to demonstrate the actual presence of -- of

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1 COVID-19 at the location?
2 MR. INGERMAN: Objection, speculation.
3 You can answer.
4 A. No, I don't think it would be -- it would
5 demonstrate the presence --
6 Q. (By Mr. Weiss) Okay.
7 A. -- and certainly not the -- the spread.
8 Q. Okay. And why don't you think it would
9 demonstrate the presence of COVID at an -- at a location
10 if somebody with COVID was at the location?
11 MR. INGERMAN: Same objection.
12 A. I'm sorry. Could you repeat your question?
13 Q. (By Mr. Weiss) Sure.
14 MR. WEISS: Can we have that read back,
15 please?
16 (Requested portion was read.)
17 A. I don't think we -- in the context of this
18 claim, we were not presented with any evidence that
19 somebody was on any of their locations that had -- we --
20 nothing -- we weren't given anything that confirmed the
21 presence at one of their locations.
22 Q. (By Mr. Weiss) And you're not able to tell us
23 what 24 Hour Fitness would have need -- needed to show
24 you to demonstrate satisfactorily to you that they had
25 the presence of COVID at a location?

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1 MR. INGERMAN: Objection, asked and
2 answered.
3 You can answer it again.
4 A. So, again, in the context of this claim, we
5 don't know; but we know what was provided to us did not
6 confirm the actual presence and spread of COVID-19.
7 Q. (By Mr. Weiss) So if you're -- if 24 Hour
8 Fitness, your customer, came to you and said, okay,
9 well, tell us what you need to see and we'll go out and
10 find it, would you be able to tell them what you needed
11 to see?
12 MR. INGERMAN: Objection. The third --
13 that's the third time we've asked the question. So
14 objection, asked and answered.
15 You can answer it one more time.
16 MR. WEISS: I don't think it was answered,
17 but go -- you can go ahead and --
18 MR. INGERMAN: I think it was.
19 But you can answer it again.
20 A. Again, what was provided to us -- and we did
21 have an RFI. And what was responded to did not confirm
22 the actual presence or spread at a described location.
23 Q. (By Mr. Weiss) I know that you keep saying
24 what was provided didn't demonstrate the actual spread.
25 But my question was: What, in addition to what was

16 (Pages 58 to 61)

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1 provided, would they needed to have given you to satisfy
2 that?

3 A. And it --

4 MR. INGERMAN: Same objection.

5 You can answer it again. Go ahead.

6 A. And again, I don't know. But what we did get
7 did not satisfy that requirement.

8 Q. (By Mr. Weiss) Have in any of the other
9 COVID-19 claims that you've been involved with, has any
10 insured provided sufficient information to you to
11 satisfy CNA that they had the presence of COVID at a
12 location?

13 MR. INGERMAN: I'm going to object and
14 instruct the witness not to answer. I mean, we're not
15 here to talk about other claims. We negotiated that
16 actually out of the 30(b)(6) notice. So she's happy to
17 answer any questions about the adjustment and coverage
18 decisions as to the 24 Hour claim, but not as to other
19 claims.

20 Q. (By Mr. Weiss) All right. So on here, on --
21 for 24 Hour Fitness -- and 24 Hour Fitness is your
22 customer. And your customer is asking you, all right,
23 we've given you information and you're telling us it's
24 not enough, what more can we give you to satisfy you,
25 and you're not able to -- to tell us; is that right?

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1 was actually there.

2 Q. And what kind of support would you need?

3 A. I --

4 MR. INGERMAN: Objection, asked and
5 answered.

6 You can answer it again.

7 A. I don't know. But what was provided did not
8 meet this requirement.

9 Q. (By Mr. Weiss) Did anybody from -- did anyone
10 on behalf of CNA visit any of the 24 Hour Fitness
11 locations in connection with the COVID claim that 24
12 Hour Fitness submitted?

13 A. I don't believe so, no.

14 Q. Did anyone from McLarens visit any of the 24
15 Hour Fitness locations in connection with the 24 Hour
16 Fitness claim?

17 A. Not that I'm aware of.

18 Q. Did CNA instruct McLarens not to visit any of
19 the 24 Hour Fitness locations?

20 A. Not that I'm aware of.

21 Q. Did -- are you aware of any of the other
22 insurers instructing McLarens not to visit any 24 Hour
23 Fitness location in connection with this claim?

24 A. Not that I'm aware of.

25 Q. Do you agree that CNA has the right and ability

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1 MR. INGERMAN: Objection, asked and
2 answered.

3 You can answer it again.

4 A. Again, we did ask through our RFIs. And I -- I
5 believe not all those were answered. But the
6 information that was provided, we reviewed, and this
7 requirement was not met. There was no actual presence
8 or spread at their locations.

9 Q. (By Mr. Weiss) Do you recall that 24 Hour
10 Fitness identified several locations where they said
11 that there were individuals who had COVID-19 who were
12 present?

13 MR. INGERMAN: Objection to the form of
14 the question.

15 You can answer it.

16 A. I -- I don't believe that there was
17 confirmation that any of those -- that there was actual
18 presence at the location. It was, you know, from what
19 we can tell, it was employees or customers who may have
20 been exposed or may have tested positive. But again, it
21 doesn't correlate to the actual presence and spread at
22 their location.

23 Q. (By Mr. Weiss) Why doesn't that correlate to
24 the actual presence and spread at the location?

25 A. So, again, we have no support to show that it

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1 to visit insured locations that are subject of a claim?

2 MR. INGERMAN: I'm going to object to the
3 form of the question.

4 You can answer it.

5 A. Yes.

6 Q. (By Mr. Weiss) Okay. So, for example, and CNA
7 does, in fact, send adjusters out to visit loss
8 locations in investigating property claims; is that
9 right?

10 A. Yes.

11 Q. Right. So if there's a fire, you might send
12 somebody out to look at the fire damage, right?

13 A. Correct. Not typical with our quota share
14 claims or the market share claims, but with our regular
15 claims, yes.

16 Q. So on a quota share claim, you might -- the
17 adjuster might send somebody out, correct?

18 A. The market adjuster?

19 Q. Yes.

20 A. Yes.

21 Q. And if there's smoke damage on a -- involved in
22 a claim, the market adjuster might send somebody out to
23 assess that, correct?

24 A. Potentially, yes.

25 Q. All right. So there wasn't anything with

17 (Pages 62 to 65)

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1 A. No.
2 Q. Did you -- did the topic of the 24 Hour Fitness
3 bankruptcy come up in that video call with Mr. Bradley
4 that we were talking about a bit ago?
5 A. I believe only that they filed bankruptcy early
6 on.
7 Q. All right. Let's look at what was premarked as
8 Exhibit 20.
9 (Schohn Exhibit 20 marked.)
10 A. This is No. 7?
11 Q. (By Mr. Weiss) Yes, the seventh McLarens
12 report dated June 22nd, 2020; and the Bates No. is
13 CNA 546 to CNA 560.
14 Have you seen this report prior to
15 preparing for your deposition?
16 A. No.
17 Q. And then if you turn to page 547, do you see
18 that in the McLarens report, they're reporting that they
19 had received a response from 24 Hour Fitness to the
20 additional questions that had been posted -- posed
21 recently?
22 A. I see that.
23 Q. Okay. Were you aware of the responses to the
24 questions that had been provided by 24 Hour Fitness
25 prior to preparing for the deposition and looking at the

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1 documents?
2 A. No, I was not.
3 Q. When did CNA make the determination that 24
4 Hour Fitness had not provided sufficient information to
5 establish coverage for its claim?
6 A. Are you asking when we developed a coverage
7 opinion?
8 Q. Right. When -- because you testified earlier
9 that information that 24 Hour Fitness had provided was
10 not sufficient to establish that, for example, that the
11 communicable disease endorsement is applicable. And so
12 my question is: When did those -- when did that
13 coverage determination get made?
14 A. So our coverage determination was basically our
15 -- the answer to the -- the suit. So that's when that
16 was made in the suit responses.
17 Q. Okay. Prior to the response to the lawsuit,
18 had Mr. Bradley formulated any preliminary opinion after
19 reviewing all the information that 24 Hour Fitness had
20 provided as to whether there might be coverage for the
21 claim?
22 A. No, not that I'm aware of. But I know that we
23 were still waiting for some more information.
24 Q. As you sit here, do you know what the
25 additional information was that you were waiting for?

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1 A. I know there was a follow-up list of questions.
2 I'm not sure what report it was in, but I don't believe
3 we received a response to that. But I would assume
4 everything was included in the suit.
5 Q. Okay. Let's look at the next one, which was
6 premarked as Exhibit 21. This will be the eighth
7 McLarens report.
8 (Schohn Exhibit 21 marked.)
9 Q. (By Mr. Weiss) And it's Bates numbered CNA 561
10 to 583 dated September 3rd, 2020.
11 A. Okay.
12 Q. And on page 562, Mr. Allen wrote that pursuant
13 to insurer's instructions, they had forwarded two
14 letters to 24 Hour Fitness, one was a denial from Somp
15 because of its communicable or infectious disease
16 exclusion. And the second letter is a reservation of
17 rights letter to the insured requesting additional
18 documentation relating to the interruption by a
19 communicable disease endorsement.
20 And then if you turn to page, let's see,
21 579, there's a September 2nd letter from McLarens to Mr.
22 Gottlieb at 24 Hour Fitness.
23 Do you see that?
24 A. Yes.
25 Q. Okay. Is this the -- are these -- are the

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1 information requests in this letter, the information
2 requests that you're referring to that you were waiting
3 for responses from or to?
4 A. I believe this was the last one, yeah.
5 Q. All right. Was -- did CNA have any role in the
6 drafting of this September 2nd, 2020 letter?
7 A. I don't know.
8 Q. Had the insureds already retained coverage
9 counsel at the time that this letter had been sent?
10 A. I don't believe we had at that time. I'm not
11 sure if we had at that time.
12 Q. And had -- were you aware of the September 2nd,
13 2020 letter that had been sent to 24 Hour Fitness prior
14 to the time that you were preparing for your deposition?
15 A. No, I wasn't aware.
16 Q. And then the next premarked exhibit was 22, and
17 that's the ninth report from McLarens dated
18 October 29th, 2020.
19 (Schohn Exhibit 22 marked.)
20 Q. (By Mr. Weiss) And that's Bates numbered 683
21 to 690.
22 Do you have that in front of you?
23 A. I do.
24 Q. Were you aware of this report prior to the time
25 that you were preparing for your deposition?

29 (Pages 110 to 113)

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE: *

24 HOUR FITNESS * Chapter 11
WORLDWIDE, INC., ET AL., *
Debtors. * Case No.: 20-11558 (KBO)

* (Jointly Administered)

24 HOUR FITNESS *
WORLDWIDE, INC., *
Plaintiff, *

VS. * Adv. Proc. No. 20-51051 (KBO)

CONTINENTAL CASUALTY *
COMPANY, ET AL., *
Defendants. *

REPORTER'S CERTIFICATE

DEPOSITION OF TRACY SCHOHN

APRIL 14, 2022

I, CAROL JENKINS, Certified Shorthand
Reporter in and for the State of Texas, hereby certify
that this transcript is a true record of the testimony
given by the witness named herein, after said witness
was duly sworn by me.

I further certify that the deposition
transcript was submitted on _____
to the witness or to the attorney for the
witness for examination, signature, and return to me by
_____.

Page 131

I further certify the amount of time used
by each party at the deposition is as follows:

Mr. David E. Weiss - (03h28m)
Mr. Brett Ingerman - (00h00m)
Ms. Ferdusi Chowdhury - (00h00m)
Ms. Elizabeth Brockman - (00h00m)
Ms. Marlie McDonnell - (00h00m)
Mr. James Bauer - (00h00m)
Mr. Joel L. McNabney - (00h00m)
Ms. Elizabeth Kniffen - (00h00m)

I further certify that I am neither
attorney nor counsel for, related to, nor employed by
any of the parties to the action in which this testimony
was taken. Further, I am not a relative or employee of
any attorney of record in this cause, nor do I have a
financial interest in the action.

SUBSCRIBED AND SWORN TO by the undersigned
on this the 21st day of April, 2022.

CAROL JENKINS, CSR, RPR, CRR
Certificate No. 2660
Date of Expiration: 8/31/2023
Nell McCallum & Associates, Inc.
Firm Registration No. 10095
718 Westcott Street
Houston, Texas 77007
713.861.0203

34 (Pages 130 to 131)

CONFIDENTIAL

131

1 I further certify the amount of time used
2 by each party at the deposition is as follows:

3 Mr. David E. Weiss - (03h28m)

4 Mr. Brett Ingerman - (00h00m)

5 Ms. Ferdusi Chowdhury - (00h00m)

6 Ms. Elizabeth Brockman - (00h00m)

7 Ms. Marlie McDonnell - (00h00m)

8 Mr. James Bauer - (00h00m)

9 Mr. Joel L. McNabney - (00h00m)

10 Ms. Elizabeth Kniffen - (00h00m)

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13 any of the parties to the action in which this testimony
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15 any attorney of record in this cause, nor do I have a
16 financial interest in the action.

17 SUBSCRIBED AND SWORN TO by the undersigned
18 on this the 21st day of April, 2022.

19
20
21 

22 CAROL JENKINS, CSR, RPR, CRR
23 Certificate No. 2660
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NELL MCCALLUM & ASSOCIATES, INC.

**Exhibit 58 to Plaintiff's Appendix of Evidence
in support of Plaintiff's Motion for Partial Summary Judgment**

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